claim may perhaps be pleaded as a defense, even though the amount of such claim is not within the jurisdiction of the court. *Griswold* v. *Pieratt, supra.*

CRIMINAL LAW—BURDEN OF PROOF—REASONABLE DOUBT—INSANITY—CONTRADICTORY AND INCONSISTENT INSTRUCTIONS.—On a trial for murder the judge instructed the jury that after evidence of the insanity of the defendant had been produced "the prosecution must prove his sanity by a fair preponderance of credible evidence." Later in his charge the judge gave the instruction that "if you are not satisfied beyond a reasonable doubt that the defendant was sane" the verdict should be one of acquittal. *Held*, that these charges were not inconsistent and contradictory. *Egnor* v. *People* (1903), 175 N. Y. 419, 67 N. E. 906.

Upon the conclusion of the charge the defendant objected and asked for an instruction that the state must prove sanity beyond a reasonable doubt, whereupon the judge gave the following charge: "The duty is upon the people to satisfy you as to the sanity of the defendant by a preponderance of the evidence, but in considering that evidence if you have any reasonable doubt as to defendant's sanity he should be acquitted." It is well settled that inconsistent and contradictory instructions upon the same material point is ground for reversal. BLASHFIELD'S INSTRUCTIONS TO JURIES, § 73; ABBOTT'S CIVIL JURY TRIALS, p. 429; THOMPSON ON TRIALS, § 2326. But the question of difficulty is whether or not the rules laid down *are* inconsistent and contradictory. In this case the majority decided that the charges read together are clear and free from conflict. In the dissenting opinion Vann, J., says the jury "could not tell which rule was to guide them, nor whether there was any difference between a preponderance of evidence and proof beyond a reasonable doubt. In the same sentence they were given a wrong rule and a right rule, and they were free to follow either." It seems clear that two contradictory rules were here given upon the same material point, and the dissenting opinion appears to have the support of the great weight of authority. *People* v. *Valencia*, 43 Cal. 552; *Clare* v. *People*, 9 Colo. 122, 10 Pac. Rep. 799; *State* v. *Keasling*, 74 Iowa 528, 38 N. W. Rep. 397; *McDougall* v. *State*, 88 Ind. 24; *Howell* v. *State*, 61 Neb. 391, 85 N. W. Rep 289; *State* v. *Peel*, 23 Mon. 358, 59 Pac. Rep. 169; *State* v. *Singleton* (1903), — Kan. —, 74 Pac. Rep. 243; *Yerkes* v. *N. P. Ry. Co.*, 112 Wis. 184, 88 N. W. Rep. 33; *Morris* v. *Warlick* (1903), — Ga. —, 45 S. E. Rep. 407.

CRIMINAL LAW—EVIDENCE — COMPETENCY OF WIFE — MANNER OF SHOWING INCOMPETENCY—SUPPRESSION OF EVIDENCE.—In a prosecution for homicide defendant testified that he had married the chief witness for the state on the day before the trial. The state then called said witness over the objection of defendant, and asked her certain questions, to which objection was made on the ground that the witness was the wife of the defendant and therefore incompetent. Thereupon the court questioned the witness and upon her affirmance of the marriage excused her. *Held*, that it was prejudicial error to call the witness to the stand. *Moore* v. *State* (1903), Tex. Cr. App. — 75 S. W. Rep. 497.

The majority opinion is based upon the idea that the state's sole object in placing the witness on the stand was "to force the defendant to object to his wife's testifying against him in order to get the benefit of her testimony thus far in aid of the supposition and theory that defendant had married the witness to suppress her testimony." It does not appear that any evidence was offered except that of defendant, to prove the marriage, or that the defendant requested an examination of the witness on her voir dire. The majority of the